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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/510,108

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EXAMINER

DENNISON, JERRY B

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/510,108	Applicant(s) NORRGARD ET AL.	
	Examiner J Bret Dennison	Art Unit 2443	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 18, 22, 23, 25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 18, 22, 23, 25 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

1. This Action is in response to the Amendment for Application Number 10/510,108 received on 10/29/2008.
2. Claims 14-15, 18, 22-23, 25, and 27 are presented for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 14-15, 18, 22-23, 25 and 27 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.
4. Claim 14 recites a "computer program product", "the computer program product having a medium with a computer program embodied thereon."

Applicant's Specification provides explicit evidence that Applicant intends the "medium" to include non-statutory embodiments. Applicant's specification recites that a computer usable medium may be "the Internet." See page 12, lines 22-30.

As such, claim 14 and its dependent claims are not limited to statutory subject matter and are therefore non-statutory.
5. Claim 22 includes a "network element comprising "means for" limitation(s) which may be implemented in software. The "means for" limitation specifically points to element 502 of Figure 5. As explained on page 8, line 5, "Figure 5 shows a resource manager in accordance with the present invention. Applicant provides further evidence that Applicant intends the claimed "network element" to be software by the amendment

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to claim 25, indicating that the network element is implemented within a router or server. This clearly indicates that the network element is not a physical device itself but merely software.

Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs are not physical "things". They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program's functionality to be realized.

M.P.E.P. 2601.1 Section I states, "Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material."

Claim 22 and all of its dependent claims do not provide the necessary hardware needed to realize the program's functionality. As such, claims 22 and all of its dependent claims are not limited to statutory subject matter and are therefore non-statutory.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14-15, 18, 22-23, 25, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliver et al. (US 2003/0225876) in view of Benfield et al. (US 20080019499).

7. Regarding claim 14, Oliver disclosed a computer program product for creating a map of available physical resources on an interface level within an Internet Protocol (IP) network, the computer program product having a medium with a computer program embodied thereon, the computer program comprising computer program code for:

combining a topology map of said IP network (Oliver, Fig. 2, 255 and [0049], Oliver disclosed creating a topology map of IP networks) with resource information (Oliver, [0022], Oliver lists many types of physical resources collected for the topology map) that comprises information about identities of addresses and quantity of addresses (Oliver, [0035], Oliver disclosed using network addresses to identify the network elements); and

performing a mapping between said addresses and physical resource information interface within said IP network, the physical resource information comprising identities of physical resources and an amount of each physical resource (Oliver, [0009], [0022], Oliver disclosed displaying a large number of network elements in their physical or logical configuration together with performance information such as the resources listed in the cited paragraph).

While Oliver disclosed representing the network elements by their addresses, Oliver did not explicitly state such addresses being IP addresses.

Examiner notes that since Oliver disclosed monitoring network elements across an IP network, it would be common sense that the disclosed addresses would be IP addresses.

In any event, Benfield disclosed a method and system for topology displays that provides identification of nodes by their IP addresses (See Figure 5A and 5B).

One of ordinary skill in the art would have been motivated to combine the teachings of Oliver and Benfield since both teachings provide SNMP management (Oliver, [0023], Benfield, [0075]) for producing topology graphs of the network and as such, their teachings are within the same environment.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate using the network element IP addresses to identify the network elements within the teachings of Oliver in order to provide users with the ability to view whatever network related information as desired thereby increasing desirability of use by customers.

Claim 22 recites a network element with limitations that are substantially similar to the limitations of claim 1. Both Oliver and Benfield disclosed a network element as claimed and as such, claim 22 is rejected under the same rationale.

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8. Regarding claim 15, Oliver and Benfield disclosed the limitations as described in claim 14, including wherein the topology map is obtained by a topology aware resource manager (Oliver, [0023]).

9. Regarding claims 18 and 25, Oliver and Benfield disclosed the limitations as described in claims 14 and 22, including wherein performing the mapping is implemented within a router or a server (Oliver, [0023]).

10. Regarding claim 23, Oliver and Benfield disclosed the limitations as described in claim 22, including a means for creating a topology map (Oliver, [0021]).

11. Regarding claim 27, Oliver and Benfield disclosed the limitations as described in claim 14, including wherein the physical resource information further comprises bandwidth information of the physical interface (Oliver, [0022]).

Response to Arguments

Applicant's arguments with respect to claims 14-15, 18, 22-23, 25, and 27 have been considered but are moot in view of the new ground(s) of rejection.

In order to expedite prosecution, Applicant is suggested to not only review the prior art used in the above rejection, but also all of the pertinent art cited herein when making amendments.

It is the Examiner's position that Applicant has not yet submitted claims drawn to limitations, which define the operation and apparatus of Applicant's disclosed invention in manner, which distinguishes over the prior art.

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Bret Dennison whose telephone number is (571) 272-3910. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/J Bret Dennison/
Primary Examiner, Art Unit 2443